



NATURAL RESOURCES DEFENSE COUNCIL

June 28, 2013

Office of Environmental Information (Mail Code: 28221T)
Docket # EPA-HQ-ORD-2013-0189
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Email: ORD.Docket@epa.gov
<http://www.regulations.gov/>

Re: NRDC Cover Letter on “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska (Second External Review Draft)(Docket # EPA-HQ-ORD-2013-0189)

Dear Acting Administrator Perciasepe:

On behalf the Natural Resources Defense Council (“NRDC”), and its 1.4 million members and activists, we submit the attached comments to the U.S. Environmental Protection Agency (“EPA”) regarding the agency’s April 26, 2013 Draft Bristol Bay Watershed Assessment (“Watershed Assessment” or “Assessment”).

The Assessment, now in its second draft, was prepared pursuant to EPA’s authority under Section 104 of the Clean Water Act. The agency first released a draft Assessment in May 2012, two years after receiving petitions under Section 404(c) of the Clean Water Act for EPA action to prohibit, deny, restrict, or withdraw the specification of the proposed Pebble Mine site in Bristol Bay, Alaska as a disposal area for the discharge of dredged or fill material. EPA subsequently held numerous public hearings, considered 233,000 public comments (over 90% in support), consulted with tribes and stakeholders, and received input from a peer review panel of 12 independent scientific experts. This comprehensive peer and public input has been incorporated into EPA’s second draft Assessment.

We commend EPA for so extensively involving the public in the Assessment process and for now releasing a *second* draft Assessment – above and beyond the standard EPA review process – and again subjecting it to peer review and public comment. A majority of the first round commenters requested that EPA strengthen its Assessment by addressing certain critical risk factors, and EPA has done so, while remaining consistently conservative in its projections of environmental impact. The result is a comprehensive, thoroughly-researched, scientifically sound assessment of the severe and

unacceptable adverse effects that would result from large-scale mining in the watershed that feeds Bristol Bay.

We submit the attached comments, structured as follows:

First, we discuss the well established legal basis for EPA's authority – supported by regulation, judicial interpretation, and scientific fact – to stop large-scale mining around Bristol Bay. Section 404(c) of the Clean Water Act grants EPA the power to prohibit, deny, restrict, or withdraw dredge and fill projects that are reasonably likely to have an “unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.” A recent, directly applicable decision of the U.S. Court of Appeals for the District of Columbia Circuit confirms EPA's power to act *whenever* failure to do so would result in unacceptable adverse environmental effects. A pending mining permit is not required for EPA to act—it may do so before, during or after a permit application has been submitted. Given the factual findings reflected in the draft Assessment, the agency may – and unquestionably should – act now to protect Bristol Bay from large-scale mining.

EPA's extensive scientific review of the foreseeable effects of large-scale mining leaves no doubt that unacceptable adverse effects (the threshold for 404(c) action) would result from large-scale mining in the region. Any large-scale mine – even if flawlessly operated (failure-free) – would *necessarily* destroy streams and wetlands through excavation and filling associated with the mine pit, waste rock piles, tailings impoundments, borrow pits, and the transportation corridor. Downstream water flow reduction would irreparably degrade salmon populations and fisheries and undermine the key to salmon health and volume in Bristol Bay—their biodiversity. The required new access road would cause population fragmentation, exposure to sediment, and decreased groundwater-surface water connectivity. Degraded salmon populations would impair the region's wildlife. And Alaska Natives, whose way of life has for centuries depended on salmon, would suffer health and cultural injury.

Furthermore, as EPA has recognized, accidents and failures *always happen* in complex and long-lasting mining operations. Indeed, over the centuries-long existence of a mine, some sort of failure is *expected*. Including potential failures in the Assessment analysis reveals adverse impacts that are even more unacceptable – and indeed catastrophic.

Second, we review EPA's process for conducting this Assessment and applaud the agency for thoroughly addressing the questions raised in response to the first draft by the peer review panel, stakeholders, and members of the public. EPA has elicited extensive input, provided open access and communication, and sought independent review, resulting in an Assessment that is analytically rigorous and scientifically beyond reproach.

Specifically, EPA responded to public comment and peer review by supplementing its analysis to include: (1) an additional mine scenario, (2) potential mitigation measures, (3) the risks and unknowns attendant to projected climate change, (4) a strengthened analysis of the complex and interconnected hydrology of the region, (5) impacts from “day-to-

day” operational risks, and (6) enhanced analysis of cumulative impacts. Each of these additions contributes to the force of the analysis and lends additional support to the request for 404(c) protection.

Finally, we argue that the primary voice in favor of destructive mining in Bristol Bay – the mining companies themselves – cannot be relied upon to safeguard the pristine ecosystem and globally important environmental resources of Bristol Bay. These entities have already misled government agencies, their investors, and the public by disseminating questionable and frequently contradictory materials and statements. Belying their assurances of stewardship here, they have a track record of environmental pollution and harm to the health of local communities.

With completion of the Watershed Assessment, the agency will have not only the clear legal authority under Section 404(c), but also the scientific and factual justification – supported by strong public support – for action to prohibit or restrict the proposed Pebble Mine or other large-scale mining project in the Bristol Bay region. We respectfully urge EPA to fulfill its mandate as the “conscience of the Clean Water Act” by granting the pending petitions to protect the Bristol Bay watershed from large-scale mining.

If ever there were a case for the exercise of EPA's 404(c) authority, it is this one.

Very truly yours,



Joel Reynolds
Western Director
Senior Attorney



Taryn Kiekow
Senior Policy Analyst